

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

FRANK HORTON)
)
v.) NO. 3-10-0799
WEBMEDX, INC.) JUDGE CAMPBELL
)

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 34), Objections filed by the Plaintiff (Docket No. 35), and a Response filed by the Defendant (Docket No. 36). Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, and the file. The Objections of the Plaintiff are overruled, and the Report and Recommendation is adopted and approved.

The Magistrate Judge found, among other things, that Defendant had to file three Motions related to Plaintiff's failure to appropriately respond to discovery requests. Docket Nos. 23, 27 and 31. In addition, Plaintiff failed to comply with the Magistrate Judge's Order (Docket No. 25) that Plaintiff respond to discovery by February 17, 2011, and failed, to this day, to produce complete responses or the computer which belongs to Defendant. Moreover, Plaintiff's failure to participate in discovery clearly prejudices Defendant's ability to defend this action.

Plaintiff indicated, in his brief Objection, that he provided discovery responses to Defendant on February 22, 2011. Even if this is true, which is disputed, those discovery responses were five days later than ordered. Defendant argues, however, that it received no discovery responses whatsoever from Plaintiff until March 11, 2011, and those responses were incomplete. In fact, as of the date of the Report and Recommendation, April 28, 2011, more than two months after the

Magistrate Judge's court-ordered deadline for Plaintiff to respond, Defendant had still not received complete responses to its discovery requests. Docket No. 34, p. 7. There is also no indication that complete responses have been filed since that date. This action was filed nine months ago and is set for trial in October of this year.

Despite being warned on February 3, 2011, that failure to respond to the discovery could result in dismissal, Plaintiff has provided no excuse or explanation for the lateness and incomplete nature of his discovery responses. The Magistrate Judge correctly determined that dismissal is appropriate under Fed. R. Civ. P. 37 and 41 and the applicable factors for consideration in the Sixth Circuit.

Accordingly, Defendant's Motions to Dismiss (Docket Nos. 27 and 31) are GRANTED, and this action is DISMISSED. In addition, Defendant shall be awarded reasonable expenses, including attorneys' fees, incurred in connection with these two Motions. Counsel for Defendant shall submit to the Court, on or before June 15, 2011, a Motion for Attorneys' Fees and Expenses, with supporting documentation, setting forth the reasonable amount of those fees and expenses. The fees and expenses issue is referred to the Magistrate Judge for a Report and Recommendation.

Any other pending Motions are denied as moot. The jury trial set for October 25, 2011, and the pretrial conference set for October 17, 2011, are canceled.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE